

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**DORIEL SCAFFOLDING, INC.**

**AND**

**CASE 29-CA-25391**

**UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS  
OF AMERICA, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS**

*Scott R. Kardel Esq.*, Counsel for the  
General Counsel

**DECISION ON MOTION  
FOR SUMMARY JUDGEMENT**

**Statement of the Case**

Raymond P. Green, Administrative Law Judge. I heard this case in Brooklyn, New York on April 29, 2003. The charge was filed on January 24, 2003 and the Complaint was issued on March 14, 2003. In substance the Complaint alleges that notwithstanding being a Board certification on November 12, 2002, the Respondent since on or about December 20, 2002, has refused to bargain in good faith.

In Case 29-RC-9926, the Employer by an attorney, David Greenhaus, submitted a notice of appearance on October 9, 2002. Thereafter, Greenhaus, on behalf of the Employer executed a Stipulated Election Agreement on October 10, 2002. That agreement which was approved by the Regional Director of Region 29 on October 10, 2002, provided that a secret ballot election would be conducted on November 1, 2002 in the conference room on the employer's facility located at 45-18 Third Avenue, Brooklyn, New York. The agreed upon bargaining unit was "all full-time and regular part-time sidewalk bridge and scaffolding erectors, employed by the Employer out of its yard located at 210 Bay Street, Brooklyn, New York, but excluding all yardmen, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

On November 12, 2002, the Regional Director certified that the Union had won the election and that it was the exclusive collective bargaining representative for the employees in the above described unit.

The charge in this case was filed on January 24, 2003 and mailed to the Respondent on January 27, 2003. The Complaint was issued on March 14, 2003 and was served by certified mail on that same date. In this regard, the General Counsel offered into evidence the envelope in which the Complaint was sent but returned. This showed that despite being addressed to Doriel Scaffolding Inc., at 45-18 Third Avenue, Brooklyn, New York, 11231, it was unclaimed. When the Respondent failed to file an Answer to the Complaint, the General Counsel sent a letter to the Employer at the foregoing address on April 2, 2003. This stated in pertinent part;

On March 14, 2003, the Regional Director issued a Complaint and Notice of Hearing against Doriel Scaffolding Inc.... Respondent was served with a copy of the Complaint and was required to file an answer to the Complaint by March 28, 2003. The Compliant advised Respondent that unless Respondent filed an answer,

The hearing in this matter is scheduled for April 29, 2003. If you have any questions, you may contact me at 718-330-2722.

The Employer did not respond to the foregoing letter and did not show up for the hearing, which was held on April 29, 2003 at 9:30 a.m.

At the hearing, the General Counsel made a Motion for Summary Judgment, which was granted based on the record and in the absence of any opposition.

Inasmuch as there was no explanation for why the Respondent failed to file an Answer in this matter, and in accordance with Sections 102.20, 102.21 and 102.35 (h) of the Board Rules and Regulations, I grant the General Counsel's Motion for Summary Judgment. <sup>1</sup> I therefore make the following

## **FINDINGS AND CONCLUSIONS**

1. The Respondent is a domestic corporation with its principle office and place of business located at 210 Bay Street, Brooklyn, New York and with an office located at 45-18 Third Avenue, Brooklyn, New York, where it has been engaged in the business of the erection and dismantling of sidewalk bridges and scaffolding.

2. During the past twelve month period, which period is representative of its annual operations in general, Respondent, in conducting its business operations, purchased and received at its Bay State facility, fuel, goods, supplies and materials valued in excess of \$50,000 directly from points located outside the State of New York.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals have held the listed positions with Respondent and have been agents of the Respondent, acting on its behalf.

Ayel Allem  
Shai Sallem

President and/or an officer  
President and/or an officer

6. At all material times, Ralph Moas has been a supervisor of the Respondent within the

---

<sup>1</sup> See *Calyer Architectural Woodworking Corp.*, 338 NLRB No. 33.

meaning of Section 2(11) of the Act and an agent of the Respondent acting on its behalf.

7. The following employees of the Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time sidewalk bridge and scaffolding erectors, employed by the Employer out of its yard located at 210 Bay Street, Brooklyn, New York, but excluding all yardmen, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

8. On November 12, 2002, the Union was certified as the exclusive collective bargaining representative of the Unit.

9. At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the Unit, for the purposes of collective bargaining.

10. On or about November 26, 2002 and December 20, 2002, the Union met and bargained with Respondent for an initial collective bargaining agreement covering the employees of the Unit.

11. Since on or about December 20, 2002, Respondent has failed and refused to bargain with the Union as the exclusive collective bargaining representative in the Unit.

12. By the conduct described above, in paragraph 11, the Respondent has failed and refused to bargain in good faith and thereby has engaged in unfair labor practices within the meaning of Section 8(a) (1) & (5) of the Act.

13. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) & (7) of the Act.

### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In order to insure that the bargaining unit employees will be accorded the services of their collective bargaining representative for the full period provided by law, I shall recommend that the initial period of certification as beginning on the date the Respondent commences to bargain in good faith with the Union. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended <sup>2</sup>

### ORDER

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

The Respondent, Doriel Scaffolding, Inc., its officers, agents, successors, and assigns, shall:

5           1. Cease and desist from

(a) Refusing to bargain in good faith with United Brotherhood of Carpenters and Joiners of America, New York City District Council of Carpenters.

10           (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

15           (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

20           All full-time and regular part-time sidewalk bridge and scaffolding erectors, employed by the Employer out of its yard located at 210 Bay Street, Brooklyn, New York, but excluding all yardmen, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

25           (b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix." <sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 20, 2002.

35           (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

40           Dated, Washington, D.C.

45           \_\_\_\_\_  
Raymond P. Green  
Administrative Law Judge

<sup>3</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

**APPENDIX**

**NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

**The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.**

**FEDERAL LAW GIVES YOU THE RIGHT TO**

**Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities**

**WE WILL NOT** refuse to bargain with United Brotherhood of Carpenters and Joiners of America, New York City District Council of Carpenters.

**WE WILL NOT** in any like or related manner interfere with the rights guaranteed to employees by Section 7 of the Act.

**WE WILL** on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time sidewalk bridge and scaffolding erectors, employed by the Employer out of its yard located at 210 Bay Street, Brooklyn, New York, but excluding all yardmen, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

**Doriel Scaffolding Inc.**

**(Employer)**

**Dated** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

**THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.**